

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte BORIS MASINOVSKY,
WILLIAM M. GALLATIN, and
PAUL J. SIMMONS

Appeal No. 2001-1732
Application No. 08/448,649

MAILED

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**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

RESPONSE OF NON-COMPLIANCE REGARDING ORAL HEARING

The record reflects that the appellants filed a Reply Brief (Paper No. 36) on December 15, 1998. On page 2 of the Transmittal of Appellants' Reply Brief, the appellants included a request for an oral hearing in connection with the appeal and noted to charge any additional fees incurred to their account.

Effective December 1, 1997, 37 CFR § 1.194(b) was amended to provide that a request for an oral hearing must be filed in a separate paper.¹

¹ 37 CFR § 1.194(b) provides in pertinent part:

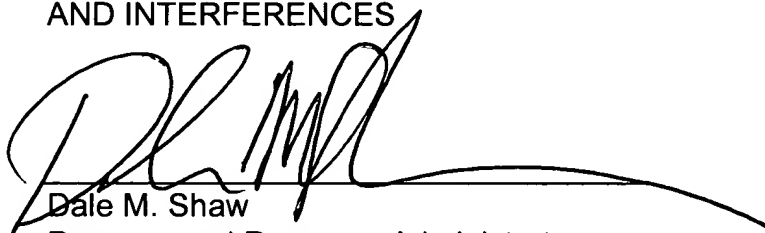
If appellant desires an oral hearing, appellant must file, in a separate paper, a written request for such hearing accompanied by the fee set forth in 1.17(d) within two months from the date of the examiner's answer.

Since the appellants' request for oral hearing was not filed in a separate paper as required by 37 CFR § 1.194(b), the appellants' request for an oral hearing cannot be granted.

If the appellants still desire an oral hearing, a petition under 37 CFR § 1.183 must be filed **within two weeks** of the mail date of this notice. Such a petition must include (1) a request to suspend the separate paper requirement of 37 CFR § 1.194(b); (2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 1.194(b) be suspended or waived; and (3) be accompanied by the petition fee set forth in 37 CFR § 1.17(h). This **two week time period** for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a). The failure to timely file a petition under 37 CFR § 1.183 will result in the appeal being decided without an oral hearing (i.e., on brief).²

By order of the

BOARD OF PATENT APPEALS
AND INTERFERENCES



Dale M. Shaw
Program and Resource Administrator
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² If the appellants decide not to file a petition under 37 CFR § 1.183, the Board of Patent Appeals and Interferences would appreciate written notice thereof so that a decision on the appeal can be expedited.

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